

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

**Call to Order:** By **VICE CHAIRMAN PETE EKEGREN**, on March 26, 2001  
at 3:00 P.M., in Room 422 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Pete Ekegren, Vice Chairman (R)  
Sen. Mike Halligan (D)  
Sen. Greg Jergeson (D)  
Sen. Walter McNutt (R)  
Sen. Arnie Mohl (R)  
Sen. Linda Nelson (D)  
Sen. Gerald Pease (D)  
Sen. Corey Stapleton (R)  
Sen. Jon Tester (D)  
Sen. Tom Zook (R)

**Members Excused:** Sen. Ric Holden, Chairman (R)

**Members Absent:** None.

**Staff Present:** Laramie Cumley, Committee Secretary  
Doug Sternberg, Legislative Services

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 397, HB 531, HB 628, HB 346  
Executive Action: HB 531, HB 346, HB 397, HB 628

#### **HEARING ON HB 397**

**Sponsor:** REP. VERDELL JACKSON, HD 79, Kalispell

**Proponents:** Holly Franz, PPL Montana  
Nancy Schlepp, Montana Farm Bureau

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. VERDELL JACKSON, HD 79, Kalispell**, stated this bill implements a water management plan for the Clark Fork River Basin. He discussed this area by using a map and said it flows all the way from Glacier Park down to Butte. He quoted **Bruce Farling** out of the Montana Business Quarterly. He said Avista Corporation owns a hydroelectric facility in Noxon and they are concerned that water users will make a significant impact on the supply of water by hydroelectric power generation. He said they have senior water rights that began in 1951 and there are 7800 junior water right holders and 26,000 water right holders in the basin. He said to protect their water supply their legal options are to force a basin closure to new water rights and/or implement a stall on junior water rights during low periods. He said the second option was to share water and adhere to scheduled watering and use alternative water sources when stream flows are low. The third reason was to look at restricting or closing overused tributaries. He said last session they had a bill addressing the closure of new water rights for two years. He stated during that time the Governor and Avista worked on agreements that went all the way to Washington D.C. The federal government renewed Avista's license for 60 years and after that the State of Montana quit having meetings and negotiating with Avista. He stated in this bill they want to create a task force made up of users in the Clark Fork Basin and they would develop a plan for water use. He stated the people that are being affected are the planners of this. He stated when a tributary was being closed it was good to have the user be a part of that decision rather than just a committee deciding it in Helena. He stated they need to do this water plan before they have a lawsuit on their hands, if there was a conflict they want to have a way to solve it in a timely matter, and the highest and best use of water will result only when there was mutual compromises among all users. Compromises are easier to accept when they are imposed on by the users themselves. He said the bill passed out of appropriations without state funding and he stated there was discussion as to whether this should come out of the RIT fund. He said they are attempting to leverage some private resources because there are a lot of different associations involved and he listed those associations. He said they have also identified some federal funds that may be used for this.

{Tape : 1; Side : A ; Approx. Time Counter : 13.7}

**Proponents' Testimony:**

**Holly Franz, PPL Montana,** stated the primary reason for this bill was to take advantage of an opportunity with Avista Corporation to work with water users especially junior water users. This bill will also help create many more options for water users along the Clark Fork.

**Nancy Schlepp, Montana Farm Bureau,** stated this bill was important for agriculture.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. GREG JERGESON** asked about the language on page 3 of the bill where state funds may not be expended for task force purposes. He asked wouldn't someone have to be involved from DNRC or a state agency in these discussions so they would have a way to advise the Governor on what was happening with the task force.

**REP. JACKSON** stated, yes, they were discussing involving a staff member and then getting some federal money or private donations for the funding of this bill. He stated one option they discussed was when the RIT fund caps at \$100,000 Million there would be more funds available. There was suggestion of an amendment to have \$65,000 available the second year of the biennium and use private or federal money the first year to get started.

**SEN. JERGESON** stated there may not be any money left in the RIT fund for this. He stated if they stay with the language on page 3, line 8 about state fund money there would not be any state funds available. He said if a state agency was involved in this matter they are not going to just volunteer their time.

**REP. JACKSON** said this was correct and without state funding it was often difficult to get any private funding. He said they have discussed an amendment to this section.

**SEN. ARNIE MOHL** asked if there would be a new fiscal note.

**REP. JACKSON** said right now they are dealing with the original fiscal note, however they passed the bill out of the House without any funding for this project.

{Tape : 1; Side : A ; Approx. Time Counter : 22.8 }

**SEN. JON TESTER** asked where the special revenue in this bill was coming from.

**REP. JACKSON** said from the Department of Natural Resources.

**Jack Stults, DNRC**, stated they have been talking to many private entities in the Basin for funding and there was lukewarm support. He said he was sure that they will get funding from private entities but probably not enough to meet their funding needs. He said there was a revised fiscal note being made up and it does reduce the cost figure to \$78,750 per year. He said they have not come up with the total cost of facilitation yet and the nature of the task force. He said they are looking at a 15 member board that would meet once every two months. He said there are no funds available right now at DNRC for this type of program.

**SEN. TESTER** asked if the \$78,750 was per year?

**Jack Stults** said, yes.

**SEN. TESTER** asked if the federal special revenue was contingent upon state funds.

**Jack Stults** said, no.

**SEN. TOM ZOOK** asked if there was no state special revenue that could be looked at.

**Jack Stults** said the only state special revenue funds that have been identified that might be available was excess revenues off of the RIT fund in the second fiscal year of the biennium.

**SEN. EKEGREN** asked what the reality was of getting money out of the RIT fund because this money was never intended for this kind of project.

**Jack Schults** said they felt there would be money in the RIT fund the second year of the biennium.

**SEN. ZOOK** said there are several other organizations looking at those same dollars.

**SEN. MOHL** asked if the Clark Fork was a state or federal owned river?

**Jack Stults** said all waters of the state are owned by the state.

**SEN. MOHL** said if there are changes will there have to be federal approval.

**Jack Stults** said the federal government was required to operate for a variety of benefits and if they can be justified then they will be a part of this.

**SEN. MOHL** said if this was a 50/50 split between state and federal then why does the state have \$70,000 in responsibility and the federal government has \$10,000.

**Jack Stults** said that \$10,000 was a place keeper and they are hopeful to get \$20,000.

**SEN. MOHL** asked if the state's portion could be reduced.

**Jack Stults** said that could be a provision in the funding from the state.

{Tape : 1; Side : B ; Approx. Time Counter : 6.7 }

**Closing by Sponsor:**

**REP. JACKSON** said this was a good bill if they can secure the funds.

**HEARING ON HB 531**

**Sponsor:** REP. KARL WAITSCHIES, HD 96, Peerless

**Proponents:** Pam Langley, Montana Agribusiness Association

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. KARL WAITSCHIES, HD 96, Peerless,** said this bill would give demonstration equipment a 45-day reprieve from paying personal property tax until they are sold, leased or removed from the state. He said they are currently classified as special mobile equipment and property taxes are due the minute they hit the border of Montana. He said this makes many companies reluctant to bring units into the state for demonstration purpose because they have to pay taxes. He said this would give them a 45 day grace period and for \$50 they can purchase a demonstration permit to put on these units. He said he did not feel the fiscal note was correct as he didn't think they would be bringing in 250 units for demonstration purposes. He said on technical note two this bill should be effective on passage and approval.

{Tape : 1; Side : B ; Approx. Time Counter : 10.3 }

**Proponents' Testimony:**

**Pam Langley, Montana Agribusiness Association**, rose in support of HB 531. **EXHIBIT**(ags68a01)

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:**

**SEN. TESTER** asked when they do demonstrations on this equipment was there rental of the equipment.

**Gary Hubin, AgChem Equipment**, said, no.

**SEN. ZOOK** asked how many units are in the state now.

**Gary Hubin** said he felt there was about 125 units. He said the main thing they are concerned about was the liability issue.

**SEN. JERGESON** asked if it would be appropriate to put in an applicability date of January 1?

**Gary Hubin** said they can bring in demos anytime of the year.

**SEN. ZOOK** asked how much would this save them.

**Gary Hubin** said he did not know what the tax structure was as far as what it costs. He said they just want to operate legally in the state and are willing to pay the fee to do this.

**Closing by Sponsor:**

**REP. WAITSCHIES** said this would be a plus for Montana to get demonstration equipment and to be able to test it out.

{Tape : 1; Side : B ; Approx. Time Counter : 20.4 }

**HEARING ON HB 628**

**Sponsor:** REP. MERLIN WOLERY, HD 90, Rudyard

**Proponents:** Pam Langley, Montana Agribusiness Association  
Bob Stephens, Montana Grain Growers Association  
Nancy Schlepp, Montana Farm Bureau

**Opponents:** None

**Informational Testimonials:** Tim Meloy, Montana Department of Agriculture

**Opening Statement by Sponsor:**

**REP. MERLIN WOLERY, HD 90, Rudyard,** said this bill deals with seed contract and seed performance disputes. He said the bill sets up a five member mediation council and will mediate disputes between two people who cannot come to an agreement on a settlement and will keep it out of the courts and the costs associated with that.

**Proponents' Testimony:**

**Pam Langley, Montana Agribusiness Association,** said they were supposed to have this last session but decided to study the mediation portion of this bill during the interim. She said several Ag groups have been on this committee and they conducted a survey and this legislation was a result of that survey. She said in many other states this mediation was mandatory but the results are not binding. She said the fees for this was set at \$250.00. She said this fee was set at the higher end because the survey showed that the lower the fees the less likely they were to get the funding. She said this will help in disputes, provide for consumer protection that was less expensive than court expense, and enable a process for others to solve disputes that are unable to.

{Tape : 2; Side : A ; Approx. Time Counter : 4.4 }

**Bob Stephens, Montana Grain Growers Association,** said they support HB 628.

**Nancy Schlepp, Montana Farm Bureau,** rose in support of HB 628.

**Opponents' Testimony: None**

**Informational Testimony:**

**Tim Meloy, Montana Department of Agriculture,** said he could help answer questions as needed.

**Questions from Committee Members and Responses:**

**SEN. COREY STAPLETON** asked if the sponsor was opposed to amending the technical note in the fiscal note of an effective date to January 1 or October 1.

**REP. WOLERY** said no, that was one of the amendments that they have drawn up already.

**SEN. JERGESON** asked if they considered plants that have been genetically modified to be a hybrid.

**REP. WORLEY** said he did not know for sure.

**Pam Langley** said she didn't know what the difference was for sure.

**SEN. JERGESON** said if a producer purchases seed that was genetically modified would they be able to request mediation.

**Pam Langley** said yes.

**SEN. TESTER** asked why are potatoes exempt.

**REP. WORLEY** said he did not know for sure.

**Larry Krum, Department of Agriculture**, stated they are talking about plants that are grown from seed not from tubers. He said there was a difference in how that seed may be affected by different conditions in the soil.

**SEN. TESTER** asked if the seed does not perform how will there be any advantages when production was based upon this.

**Larry Krum** stated if the seed was labeled that it was resistant to a disease and it becomes infected with that strain then it was covered.

**Closing by Sponsor:**

**REP. WORLEY** stated one of the amendments he was proposing exempts other kinds of seeds such as sugar beets.

{Tape : 2; Side : A ; Approx. Time Counter : 12.4 }

**EXECUTIVE ACTION ON HB 531**

**Motion:** **SEN. STAPLETON** moved that **HB 531 BE CONCURRED IN.**

**Discussion:**

**Substitute Motion/Vote:** **SEN. JERGESON** made a substitute motion that a conceptual amendment to put in a retroactive applicability date of January 1, 2001 **BE ADOPTED. Substitute motion carried unanimously.**



**Motion/Vote:** SEN. STAPLETON moved that HB 531 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

{Tape : 2; Side : A ; Approx. Time Counter : 15.9 }

**HEARING ON HB 346**

**Sponsor:** REP. CLARICE SCHRUMPF, HD 12, Billings

**Proponents:** Mark Bridges, Montana Department of Livestock

**Opponents:** None

**Opening Statement by Sponsor:**

REP. CLARICE SCHRUMPF, HD 12, Billings, stated this bill will exempt retail grocery stores from having to buy a separate \$5.00 license each year to sell eggs. She said currently retail stores have a retail license to sell all types of food items not just individual items. The current law was antiquated because it was originally used when eggs came from several small farm flocks. Public health was not compromised by having retail egg licenses and should be included with the other license that the retail owner has to acquire.

**Proponents' Testimony:**

Mark Bridges, Montana Department of Livestock, stated 81-20-210 was still in effect. He said under current law wholesale dealers will still be required to be licensed in selling and handling of graded eggs.

**Opponents' Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

REP. SCHRUMPF stated this will give grocery stores a break and fix an antiquated law.

{Tape : 2; Side : A ; Approx. Time Counter : 22.3 }

**EXECUTIVE ACTION ON HB 346**

**Motion/Vote:** SEN. TESTER moved that HB 346 BE CONCURRED IN. Motion carried unanimously.

**EXECUTIVE ACTION ON HB 397**

**Motion:** SEN. JERGESON moved that 2004 BE INSERTED FOLLOWING SEPTEMBER ON PAGE 3, LINE 6 AND TO STRIKE PAGE 3, LINE 7.

**Discussion:**

SEN. JERGESON said if they can find money to put into this they can deal with it in a conference committee.

SEN. STAPLETON stated he agreed this was a problem for the bill. He said if they are going to have state funds mentioned in there they need to know where it was coming from.

SEN. MOHL stated this should not become a part of the General Fund.

SEN. JERGESON stated this might be the only place that they can find \$75,000 a year.

SEN. MOHL stated he thinks they should pass it out the way it was and if they decide to spend the money on the floor then he would support it.

SEN. TESTER stated this was designed as a four year process and wasthere a way they could adjust the funding through that method.

SEN. JERGESON said he did not think it should come totally from the General Fund, but let a conference committee decide where the funding should come from specifically.

SEN. ZOOK stated there was no appropriation in the bill and it does not matter whether they strike line 7, page 3 or not. If the bill continues through the process then it will go to a conference committee and they can decide if it should be funded. He said if they take line 7, page 3 out then they are opening it up so that if at some point there was some money appropriated then it was the General Fund.

SEN. TESTER said he did not feel the funding would be able to come from the RIT fund.

REP. JACKSON stated the amendment would improve the bill and would give it the possibility of being funded. He said Avista Corporation was one of the main players in this and they are willing to work with them on a task force. This opportunity might not always be available.

**SEN. STAPLETON** explained if they strike line 7, page 3 how does the bill stay alive and would there need to be a fiscal note.

**SEN. ZOOK** stated the fiscal note has no value even as the bill stands right now and there was no language in the bill that says there are appropriations of money.

**SEN. JERGESON** said if this bill passes out then it would show up on the General Fund status sheet. He said a dollar amount would not be in revenue or appropriation, the dollar amount would be a potential appropriation. A conference committee would have to appropriate money to pay for the bill if it was decided upon.

**SEN. STAPLETON** asked if they should put in language that the states General Fund cannot be used.

**SEN. JERGESON** said that could be an option but this issue could be an expenditure of General Fund because it deals with water rights.

**SEN. STAPLETON** said if they put in this amendment then there would have to be a new fiscal note.

**SEN. JERGESON** said it doesn't draw down the General Fund balance unless it was appropriated in HB 2.

**SEN. MOHL** said he would like to make sure that it does not affect the General Fund balance.

**Vote:** Motion to accept the conceptual amendments **carried 5-3 with Holden, Mohl, and Stapleton voting no.**

**Motion/Vote:** **SEN. JERGESON** moved that **HB 397 BE CONCURRED IN AS AMENDED. Motion carried 5-3 with Holden, Mohl, and Stapleton voting no.**

{Tape : 2; Side : B ; Approx. Time Counter : 10.9}

#### **EXECUTIVE ACTION ON HB 628**

**REP. WORLEY** explained amendments **HB062802.ak1. EXHIBIT (ags68a02)**

**Motion:** **SEN. ZOOK** moved that **AMENDMENT HB062802.AKL BE ADOPTED.**

#### **Discussion:**

**SEN. TESTER** discussed the \$250 fine on page 4 of the bill and wondered why this was put in to begin with.

**Ralph Peck, Department of Agriculture**, stated this was a deposit for the cost of the mediation. He said the person filing the complaint would pay this fee so that there would not be a lot of complaints being filed. The person responding to the complaint also pays so that both parties are paying for the mediation equally.

**SEN. ZOOK** stated the buyer pays the filing fee but in subsection 2 the seller shall submit a \$250 fee and this should be struck out.

**Ralph Peck** stated the concept was when someone has a complaint they pay \$250 to file that complaint. The individual in which this was filed upon would have to respond and they would not necessarily have to pay the \$250 fee to respond to someone else's complaint.

**SEN. ZOOK** read line 6 on page 4. He said he would still like to have the seller struck out of the bill.

**SEN. TESTER** asked how would they be able to share in the mediation if this was struck out.

**Ralph Peck** said the Department will assess the two parties the cost of the mediation. He said it may exceed \$250 from each party. He said there may also be an agreement that the loser pays for the mediation costs.

**REP. WORLEY** said section 8 talks about the cost of mediation.

**SEN. TESTER** asked what if the cost of mediation exceeds the amount stated or what the parties have agreed to in writing, what happens then.

**SEN. ZOOK** said this states that the buyer may initiate mediation but what if the seller wants to initiate mediation.

**Pam Langley** said in the past it has never been the seller who initiates mediation but the buyer.

{Tape : 2; Side : B ; Approx. Time Counter : 24.9 Comments: Some parts of tape are difficult to understand.}

**SEN. JERGESON** asked why are they changing the language on page 2, line 27? He said why not strike this language.

**Doug Sternberg, Legislative Services** stated they are ignoring amendments 3 and 4 which would take care of this question.  
(EXHIBIT 2)

**SEN. JERGESON** asked about amendment #11.(EXHIBIT 2)

**Vote:** Motion **carried unanimously.**

**Motion:** **SEN. ZOOK** moved that **HB 628 BE CONCURRED IN AS AMENDED.**

**Discussion:**

**SEN. STAPLETON** said he can think of some examples of where the seller may do the complaining and will want to start mediation and this bill does not address that.

**Doug Sternberg, Legislative Services,** stated on page 2, line 22, subsection 1 clarifies that either party can maintain proceedings.

**SEN. STAPLETON** stated this language says only the buyer can initiate mediation but either side can initiate legal action. He said he does not know why the seller cannot initiate mediation.

**Doug Sternberg** stated the language could be clarified in subsection 6 to allow either party to initiate mediation and the person that initiates the complaint would be required to file the \$250 fee.

**SEN. JERGESON** said the whole idea of mediation was to iron out their differences. He said if it did not cost anything to complain about a person it might happen a whole lot but on the other hand, if it doesn't cost anything to trash the complaint then this was a problem. He said if both sides have to pay \$250 then they know how serious the problem was and are willing to try and fix it in mediation rather than going to court.

**Doug Sternberg** stated they need an amendment to reinstate lines 12 and 13, page 4.

**Motion/Vote:** **SEN. TESTER** moved that **AN AMENDMENT** to reinstate lines 12 and 13, page 4 **BE ADOPTED. Motion carried unanimously.**

**Motion/Vote:** **SEN. TESTER** moved that **HB 628 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 4:50 P.M.

---

SEN. RIC HOLDEN, Chairman

---

LARAMIE CUMLEY, Secretary

RH/LC

**EXHIBIT** (ags68aad)